

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

_____)	
D.T.E. _____)	
NEW ENGLAND POWER COMPANY)	Petition for exemption of electric
25 Research Drive)	substation additions from Zoning
Westborough, MA 01582)	Ordinances of Salem, Massachusetts.
_____)	

To the Honorable Department of Telecommunications and Energy:

1. This is a petition of New England Power Company (NEP) for exemption by the Department from the operation of the Zoning Ordinances of the City of Salem, Massachusetts with respect to the construction and use of proposed additions to NEP's 115kV switchyard located at Salem Harbor Station.

2. NEP is a Massachusetts corporation authorized to transmit electricity, an electric company as described in Chapter 164 of the General Laws, and a public service corporation. *New England Power Company*, D.P.U. 92-255, at 2 (1994); *New England Power Company*, EFSB 97-3 at 76 (1998).

3. NEP proposes to construct, maintain and operate additional 115 kV switchyard facilities in said City of Salem on land held in easement by the Petitioner at the Salem Harbor Station off Derby Street. NEP proposes to use approximately 7000 square feet of the said easement to enable the Petitioner to add facilities to provide improved voltage support to its customers in the North Shore region.

4. Specifically, NEP proposes to add two capacitor banks to its 115 kV switchyard to support the transmission of electricity to its customers. Mr. Robert Fougere's testimony, submitted with this Petition, explains the configuration of the capacitor banks.

5. The capacitor banks will provide voltage support to NEP's transmission system customers in the North Shore region. This will enhance service reliability in the area.

6. The testimony of Mr. John Martin, also submitted with this Petition, explains the public benefits of NEP's project and discusses alternatives to it.

7. The proposed project will require approximately 20 months from end of final design until the testing and commissioning of the new facilities. Construction will take place primarily during normal business hours, Monday through Friday, and will not increase existing noise levels. NEP anticipates using a portion of its easement for its laydown area and does not expect to make a noticeable impact on local traffic.

8. NEP's proposed project will not affect wetlands, wetland resource areas in the vicinity of the 115 kV switchyard or the neighborhood's visual resources.

9. NEP's 115 kV switchyard is located in Zoning District "I" (Industrial). *See Attachment A (Zoning Map of Salem, Massachusetts.)*

10. In the City of Salem, Zoning Ordinances are in effect under which it appears that the use of lands for the purpose referred to above, and the construction, operation and maintenance thereon of the proposed 115 kV switchyard additions, do not conform in certain respects to the uses permitted as of right in an "I District". *See Attachment B (City of Salem Zoning Ordinances).*

11. NEP requests a comprehensive exemption from the provisions of the Zoning Ordinances, which exemption the Department may grant in circumstances "where numerous individual exemptions are required or where the issuance of a comprehensive exemption could avoid substantial public harm by serving to prevent delay in the construction and operation of the proposed use." *NSTAR Electric & Gas Corporation*, D.T.E. 03-7, at 33, (2003); see also *Tennessee Gas Pipeline Company*, D.T.E. 01-57, at 11 (2002); *Massachusetts Electric Company*, D.T.E. 01-77, at 30-31 (2002).

At a minimum, NEP believes that it needs exemptions from the following provisions of Salem's Zoning Ordinances:

- Article V, §5-3(h) which requires a special permit for industrial operations;
- Article V, §5-3(j) relating to the change, enlargement, extension or expansion of nonconforming lots, structures, land and uses;

- Article VIII, relating to nonconforming lots, structures, land and uses;

Under the Zoning Ordinances, the use of Salem Harbor Station for the generation of electric power appears to be a nonconforming (but grandfathered) use. NEP assumes that this nonconforming (but grandfathered) status applies to the 115 kV switchyard as well, since it was originally built as part of Salem Harbor Station. Both Article VIII of the Zoning Ordinances and G.L. c. 40A, § 6 provide that the Zoning Ordinances do not apply to structures or uses lawfully in existence when the Zoning Ordinances were adopted. However, it appears that NEP's proposed work is subject to and entitled to protection under the zoning ordinances.

- Section 9-4 relating to special permits

Although the 115 kV switchyard is legally nonconforming with respect to use, Article V, §5-3(j), Article VIII and Article IX, § 9-4 of the Zoning Ordinances require zoning approval if nonconforming structures and nonconforming uses of land and structures are to be altered, reconstructed, changed, enlarged, extended or expanded unless a special permit is granted by the City of Salem Zoning Board of Appeals. NEP's proposed work will result in the alteration, reconstruction, change, enlargement, extension and/or expansion of both the nonconforming 115 kV switchyard structures and the nonconforming use of the substation easement at the Salem Harbor Station site. Therefore, absent an exemption from the Zoning Ordinances, NEP would have to apply for and obtain a special permit to build its 115 kV switchyard additions.

- Article VI, §6-4, Table II specifies certain dimensional and setback requirements for Zoning District "I". NEP's 115 kV switchyard does not and will not meet all of the requirements because it is part of a larger nonconforming series of structures, the Salem Harbor Station.

12. As shown above, NEP requires numerous individual zoning exemptions, one criteria for obtaining zoning relief from the Department rather than the local Board of Appeals.

13. In addition, the process of obtaining zoning exemptions from the Board of Appeals could be prolonged compared to a Department proceeding. *See* Article IX, §9-3 for a description of the scheduling accorded the Board of Appeals. From the filing of an application for a special permit to the resolution of any judicial appeal that might be

lodged, years could elapse. As will be shown in NEP's testimony in this proceeding, the need for the 115 kV switchyard additions is urgent.

14. Furthermore, since the Department is currently considering certain zoning exemptions for Salem Harbor Station sought by US Gen New England, Inc. (USGen) in Docket 03-83, it makes sense for one authority – the Department – to consider both parties' requests.

15. As the attached testimony of Mr. Paul Richards shows, NEP has undertaken an environmental review of the site and the project and has concluded that no additional permits will be required beyond the zoning exemption sought from the Department.

16. The easement held by the Petitioner, and the portion thereof to be used for additional substation facilities, are shown in detail on a plan dated November 20, 2003 entitled Plan of Land showing New England Power Company Easements, Salem Harbor Station, Salem, Massachusetts, attached hereto, made a part hereof and marked Attachment C.

17. As a public service corporation, NEP is entitled to the benefits of the provisions of Section 3 of Chapter 40A of the General Laws, as the case may be, and desires to be exempted thereunder from the operation of the Zoning Ordinances of the City of Salem in connection with its use of the lands referred to above and the construction, operation and maintenance thereon of the proposed substation additions to the extent such by-law may be applicable thereto.

WHEREFORE, the Petitioner prays that the Department, pursuant to the authority of Section 3 of Chapter 40A of the General Laws and after due notice and a public hearing, will decide that the present situation of the lands referred to above, and the 115 kV switchyard structures to be built and maintained thereon by the Petitioner, is reasonably necessary for the convenience and welfare of the public, and that such lands, and the structure to be built and maintained thereon by the Petitioner, may be exempted from the operation of the Zoning Ordinances of the City of Salem, to the extent applicable thereto.

Respectfully submitted,

NEW ENGLAND POWER COMPANY

s/Marc Mahoney

By _____
Marc Mahoney
Vice President